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The Honors College at the College at Brockport

**The Impact of the Gospel of Matthew on the
Treatment of Violence and Self-Defense in the
Medieval English and Modern American Legal Systems**

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May 24, 2019

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Examining Jesus's Teachings on Violence, Judgment, and Punishment in the Gospel of Matthew

Introduction

There is no doubt that the Bible is filled with the concept of violence, especially in the New Testament, where Jesus faces the violence of persecution in his own life. There is also no doubt that the synoptic gospels each has its own way of addressing this violence: Mark responds to the violence with Jesus's passivity, while Matthew, Luke, and John, each to their own extent, teach about non-retaliation and doing good to those who wrong you through their depictions of Jesus's response to violence. Significantly, Matthew depicts Jesus's response to violence in two different ways: first, Jesus teaches submission and peacemaking on earth, but when he speaks of his post-resurrection return to the earth, he promises vengeance in the eschatological setting. These two different positions on violence create two contradictory versions of Jesus in Matthew: the peaceful, earthly Jesus, and the vengeful and violent eschatological Jesus.

The Expectations of the Peaceful, Earthly Jesus

First, I will examine the teachings in the Gospel of Matthew of the earthly Jesus, who condemns retaliation and praises peace. In the beginning of Chapter 5 of Matthew, Jesus teaches his disciples, "Blessed are the meek, for they shall inherit the Earth" (*The HarperCollins Study Bible*, Matthew 5:5). According to R.T. France's commentary, this "[beatitude] commends those whom the world in general would dismiss as losers and wimps" (France 159) – or otherwise stated, submissive people, who bend to the will of others, without standing up for themselves. Furthermore, "meek" in this verse "speaks not only of those who are in fact disadvantaged and powerless [and

therefore, forced to submit], but also of those whose attitude is not arrogant and oppressive” (France 166).

In addition, according to W.D. Davies and D.C. Allison’s commentary on Matthew, “the word... ‘meek’ was intended to make plain the religious dimension of ‘poor’ [used in Matthew 5:3]. Hence 5:3 and 5:5 are in synonymous parallelism. No real difference in meaning between the two is to be discerned” (Davies and Allison 1:449). In fact, they argue that “[i]n time, ‘poor’ came to be a self-designation for the meek, humiliated, and oppressed people of God...[for whom Jesus] promises salvation” (Davies and Allison 1:443). However, “[u]ntil the eschatological reversal takes place...mourning is heard because the righteous [or meek] suffer, because the wicked prosper, and because God has not yet acted to reverse the situation” (Davies and Allison 1:448). In these two beatitudes, Jesus draws a clear distinction between those who are meek or poor, and therefore submissive to the will of those who persecute or oppress them, and others, stating that those who are meek will be rewarded greatly, while the “‘wicked’ who have oppressed them [are] cut off” (France 166). This is clearly desirable to Jesus’s followers, as they want to understand how to be accepted and rewarded by God, but they also struggle to “be content with the status quo” (Davies and Allison 1:448) without the promise of some form of reward, or alternatively, vengeance.

Jesus also states, “Blessed are the peacemakers, for they shall be called the Sons of God” (Matthew 5:9). This beatitude emphasizes not only having a “peaceful disposition” – one must also make “an active attempt to ‘make peace,’ perhaps by seeking reconciliation with one’s own enemies, but also...overcoming the natural desire for advantage and/or retribution,” which is otherwise known as “*lex talionis*” (France 169). Davies and Allison argue that “[P]eacemaker’, not ‘pacifist’ or ‘peaceful’, is the right translation of [the Greek text], for a positive action, reconciliation, is envisioned: the ‘peacemakers’ seek to bring about peace” (Davies and Allison

1:457). It is, however, important to note that Jesus teaches that not all conflict is avoidable, and being a peacemaker does not necessarily require being peaceful at all times. Instead, “peacemaking... implies assuming responsibility against all the odds, risking peacemaking out of a situation of powerlessness, and demonstrating the conviction that in the end God’s kingdom will prevail” (France 169) – again, emphasizing that the meek or powerless will be rewarded for pursuing peace and God’s will. This ties into Jesus’s later teachings in Matthew on how to respond to violence, especially his expectations of his followers’ responses to persecution.

Jesus’s earthly teachings in Matthew hold readers to an extremely high standard: to be rewarded by God, you must be a peacemaker, and you must be meek. However, Jesus’s expectations for his followers do not end there: he also expects his followers to respond to violence submissively and with kindness. For example, Jesus explains that although his disciples have been taught that murder is wrong, they are also expected not to get angry with anyone, as this too will lead to judgment against them. Jesus teaches that violent behavior is a sin, and any violent thoughts are just as sinful. This specific declaration speaks to intent, “[promoting] an ‘inward’ concern with motive and attitude above the ‘outward’ focus on the visible and quantifiable observance of regulations” (France 197). Jesus teaches “that anger and insulting words [are] as deserving of punishment as murder” (Davies and Allison 1:516), and this implies that “anger and harsh words are made out to be not two human shortcomings among others but grievous sins to be exorcised at all costs,” just like murder (Davies and Allison 1:509). Therefore, Jesus’s declaration implies that intent matters as much as deed, and that if one’s intent or attitude is sinful, he is not truly following the will of God and will be punished at the time of the final judgment. Additionally, this declaration that “all wrongs against one’s neighbor are equally wrong” suggests that “it is foolish to make casuistic distinctions with regard to degrees of punishment” (Davies and Allison 1:515), which has

interesting implications for real-world applications. Of course, the inclusion of anger as a sin also poses an interesting challenge for human judgment in earthly courts, which will be examined later.

In framing another expectation, Jesus explains:

You have heard that it was said, “You shall love your neighbor and hate your enemy.” But I say to you, Love your enemies, bless those who curse you, do good to those who hate you, and pray for those who persecute you, so that you may be sons of your Father who is in heaven...For if you love those who love you, what reward do you have?...You therefore must be perfect, as your heavenly Father is perfect. (Matthew 5:43-48)

Here, Jesus prohibits not only violence, but also any attempts at proportionate retribution, and instead promotes “irenic relations between Christians and those outside the church, including opponents or enemies” (Davies and Allison 1:519). In addition, Jesus’s emphasis on loving one’s enemies “does not specify whether he is talking about personal hostility or about political enemies – which at that time would mean primarily the Roman occupying forces” (France 225). While Matthew 5:43 uses the singular “enemy” when explaining the old teachings, Jesus uses the plural “enemies” in 5:44, implying that “no class of enemy is excluded” and that “to love in the [New Testament] is not only a matter of emotion but also of an attitude which determines our behavior, acting for the good of the other” (France 225). This again emphasizes that intent and attitude matters equally as much as actions and behaviors. Jesus’s concern with intent is again exemplified by the ending clause of Matthew 5:44 – “pray for those who persecute you.” Here, it is your public submission to your persecution by others combined with private prayer that determines your goodness, thus emphasizing the importance of attitude and intent.

This teaching sets an expectation that those who stand up for the will of God will be subject to persecution – as indeed has been the case according to R.T. France’s commentary, which states

that “those who have spoken out for God have always been liable to the violent reprisals of the ungodly. In light of that heritage, to be persecuted for the sake of Jesus is a badge of honor” (France 173). Part of Jesus’s expectations for his followers is that they will be persecuted “because the message of God’s kingship is one which always has and always will lead to violent response from those who are threatened by it” (France 407), which again, in Matthew’s time would be the Roman occupying forces. However, Jesus’s teachings “[reflect] the conviction that revolution against Rome was the wrong course to take” (Davies and Allison 1:458), and Jesus suggests, “one is to love not only personal opponents but God’s opponents, the enemies of God’s people” (Davies and Allison 1:551). According to France, Jesus expects his followers to face persecution submissively, thus “the prospect Jesus holds out before any ‘worthy’ disciple...[is] a savage death and public disgrace” (France 411). Indeed, Jesus promises reward for those who are persecuted, on the condition that they respond submissively and even benevolently to the violence against them.

In addition, this passage “substitutes for what is in principle a one hundred percent achievable righteousness (the avoidance of breaking a definable set of regulations) a totally open-ended ideal (being ‘perfect as your heavenly Father is perfect’) which will always remain beyond the grasp of the most committed disciple” (France 197). Thus, “life in strict accord with legal ordinances is not enough. God demands a radical obedience that cannot be casuistically formulated” (Davies and Allison 1:521). Jesus sets these expectations, knowing that it is an extremely high standard that most or even all people will not be able to achieve and that human judgment and legal systems will struggle to accommodate. Jesus defines these few people who actively respond to violence and hatred with love and good works as perfect, and this is what he expects his followers to strive for – indeed, a very high expectation to meet – perhaps even an impossible expectation, as “it is only the most sanguine of disciples (or those with little self-awareness) who can comfortably

attempt to simply put into practice this teaching” (France 195). While it may be impossible to fully commit to being as perfect as God, Jesus certainly gives his followers something to strive for, “[challenging] those who have accepted the demands of the kingdom of heaven to live up to their own commitment by being different from other people...to draw [their] standards of conduct not from what everyone else is doing, but from [their] heavenly Father” (France 224). Therefore, Jesus does not condemn those who are not perfect, but instead sets an expectation of at the very least an effort to be perfect as God is perfect. Jesus’s followers must try to prove their commitment to God by attempting to emulate godly conduct, even though many will fail. Those that try and fail will not necessarily be punished, but those that succeed will be greatly rewarded.

Jesus further explains his expectations, stating, “You have heard that it was said ‘An eye for an eye and a tooth for a tooth.’ But I say to you, Do not resist the one who is evil. But if anyone slaps you on the right cheek, turn to him the other also” (Matthew 5:38-39). This is an extreme form of pacifism, emphasizing submissiveness and non-retaliation, especially given that “[t]o slap another’s cheek was a serious insult...for which legal redress could be claimed...but to slap the *right* cheek required (if the assailant was right-handed) a slap with the back of the hand, which was far more insulting and would entail double damages” (France 220). This, of course, would not only be considered a physical assault, but “[i]n a culture that took honor and shame far more seriously than ours, this was a paradoxical and humiliating demand” (France 221). Jesus expects his followers to not only refrain from acting violently in the first place, but to also refrain from responding violently to violence against them, and to allow those who act violently against them to continue their violence by passively acquiescing, and forgiving them for their actions, instead of seeking the legal redress to which they would be entitled. After all, as Davies and Allison suggest, “How could

the meek, the merciful, the peacemakers, and those who are happy to suffer for the right cause strike back at their opponents?” (Davies and Allison 1:541).

Despite calling for his followers to be meek and to be peacemakers, Jesus paradoxically emphasizes a form of self-mutilation over committing violent acts against others. He says, “...if your right hand causes you to sin, cut it off and throw it away. For it is better that you lose one of your members than that your whole body go into hell” (Matthew 5:30). While this pronouncement follows Jesus’s teachings on adultery, and therefore includes first a statement about the eye causing one to sin, this “shocking but well-recognized metaphor of self-mutilation...[i]n its Marcan context (Mark 9:43-48) and in its fuller Matthean use (18:8-9) does not have a specific reference to sexual desire” (France 206), and Matthew only “puts the saying about the eye before the saying about the hand because the link is with the lustful gaze in 5:28” (Davies and Allison 1:523). This idea is repeated later in Matthew, when Jesus similarly says, “And if your hand or your foot causes you to sin, cut it off and throw it away. It is better for you to enter life crippled or lame than with two hands or two feet to be thrown into the eternal fire” (Matthew 18:8). Both instances seem to apply to various forms of violent behavior, as the hand can be used to commit many violent acts, such as slapping as discussed previously, in addition to other sins, whether by hand, eye, or foot. Both instances emphasize that violence toward oneself would be preferable to violence against another. Jesus explains that violence against another would be a sin and would cause the sinner to go to hell - a more violent punishment than just the loss of a part of one’s body. While self-mutilation is a violent act, this teaching emphasizes Jesus’s earlier teachings about being a peacemaker toward others, and overcoming the human desire of *lex talionis*, while also remaining consistent with Jesus’s statement that it is better to enter life crippled than to be sent to hell for being violent against others. Whether one must cripple himself to prevent himself from violently sinning, or one must be

crippled – physically or metaphorically, in terms of one’s honor – by another’s violence, Jesus clearly states that either of these two scenarios is better than being sent to hell for acts of violence, even if that violence is only in retaliation to another’s violence.

Moreover, when Peter asks just how tolerant one should be when another sins against him, specifically referencing “an individual’s response to personal injury” (France 699) and stating, “‘Lord, how often will my brother sin against me, and I forgive him? As many as seven times?’” Jesus responds, “‘I do not say to you seven times, but seventy-seven times’” (Matthew 18:21-22). This hyperbolic response – France states that Peter’s suggestion of seven times “would probably have been regarded as ‘over the top’” and “an extreme proposal,” making “Jesus’s reply in v. 22...more startling” (France 700) – highlights the submissiveness Jesus expects from his followers: one must allow others to sin against one without retaliation, and one must allow others to do as they please, even offering to accept further violence and to do good deeds for an enemy. These expectations require the disciples not to insist on their right to redress, whether physically with a defensive violent response, or legally with a request for damages.

Jesus illustrates this expectation with the Parable of the Debtors, in which a king forgives the debt of a slave who does not have enough money to repay his debt, but when the slave meets a fellow slave who is indebted to him, he acts mercilessly and throws him in prison. When the king hears of the slave’s mercilessness, he turns him over to be tortured until he repays his debt (Matthew 18:22-35). The king in this parable was able to forgive the slave’s debt, but he could not forgive the slave’s clear proof of his unworthiness of the king’s mercy. Therefore, his punishment is a violent one. Interestingly, the Revised Standard Version of the Bible, changes the “torturers” (or the King James Version’s “tormentors”) to “jailers” – a revision that France claims is “misplaced,” as the slave’s “destiny is not detention but painful punishment” (France 708). The incidents

described in this parable are “a transparent symbol of eschatological judgment” (Davies and Allison 2:803), and it is therefore clear that Jesus conceives of the punishment for those that do not forgive others as a violent, painful one, like that of the merciless slave.

Jesus not only teaches these expectations with pronouncements and parables in Matthew, but he also exemplifies them with his own actions on Earth. Throughout Matthew, Jesus repeatedly faces violence, persecution, and the opportunity to react violently. However, he follows his own teachings and does not retaliate, “[b]ut his inactivity is full of meaning” (Davies and Allison 3:517). For example, when Judas betrays Jesus and he is arrested, Jesus does not fight back, instead he surrenders completely; therefore, his actions “harmonize with his decision in Gethsemane and his earlier moral instruction” (Davies and Allison 3:506). In fact, Matthew explains that Judas came to betray Jesus with “a great crowd with swords and clubs” (Matthew 26:47), as if he is expecting Jesus to put up a fight, but “[the] irony is plain: weapons are superfluous, for Jesus, faithful to his word, eschews physical violence” (Davies and Allison 3:507). Of course, Jesus responds with complete submission, saying, “Friend, do what you came to do” (Matthew 26:50) and, later, “Have you come out as a against a robber, with swords and clubs to capture me? Day after day I sat in the temple teaching, and you did not seize me” (Matthew 26:55). Jesus clearly wishes to highlight his non-violence during his arrest by verbally bringing attention to it. In fact, “Matthew has replaced the ‘I was with you’ of [Mark] 14:49 with the more vivid ‘I sat’...[perhaps to emphasize] Jesus’s passivity and lack of movement” (Davies and Allison 3:515). The crowds evidently came prepared for a violent interaction, as if they were seizing a violent criminal, but Jesus reminds them that they could have simply seized him when he was sitting in the temple teaching, as he would have reacted in the same way: peaceably.

Jesus again emphasizes his view of non-retaliation when one of the men who are with Jesus during his arrest reacts violently by cutting off the ear of the servant of the high priest, scolding the man: “Put your sword back into its place. For all who take the sword will perish by the sword” (Matthew 26:52). Here, Jesus clearly reiterates his prior teachings on non-retaliation and his disapproval of meeting violence with violence, stating, ““Do you think that I cannot appeal to my Father, and he will at once send me more than twelve legions of angels?”” (Matthew 26:53). It is important to note the strength of resistance that Jesus has at his disposal, as “[a]ngels...are sometimes warriors in the biblical tradition, where they can fight with or on behalf of the saints [and] often they have swords” (Davies and Allison 3:513). This highlights Jesus’s submissiveness, by “mak[ing] it clear that it is not that he *cannot* resist but that he *will not*” (France 1008). In addition, Jesus’s statement emphasizes that “[p]hysical resistance was not only wrong in principle but also unnecessary, since [he] had far more force at his disposal, if he chose to summon it, than a few human supporters could offer,” suggesting that “[if] there is to be fighting, it is to be done by supernatural forces, not by human volunteers” (France 1014). Jesus exemplifies nonviolence and nonresistance, but he makes sure to clarify that his actions are not a sign of weakness or submission to his enemies, but a sign of submission to God’s will, in spite of his ability to resist through supernatural forces.

Jesus also exemplifies nonresistance when he is abused by his arrestors “in a suitably cruder and more violent way” (France 1061); however, “[a]fter the brutal torture of the Roman flogging Jesus would [have been] in no state to resist even if he had wished” (France 1061), and in fact, “[k]nowing it was custom to carry one’s crossbeam...one [can infer] from this transitional verse that the scourging left Jesus so weakened that another had to be coerced to carry his cross” (Davies and Allison 3:610). Regardless, Jesus does not make even any feeble attempts to retaliate, despite

being beaten and mocked by his arrestors, who place a crown of thorns on his head, which “would inevitably be painful...even if the intention was primarily mockery rather than physical torture” (France 1062). Jesus makes no attempts to stop this mockery and physical torture, even if only by simply pushing the crown of thorns from his head, thus making him a perfect example of how to apply his teachings.

The emphasis on Jesus’s passivity during his arrest and subsequent abuse implies that Jesus expects his followers to practice this type of passivity in their own lives, especially when faced with persecution. Again, France states that this type of violent reaction to “those who have spoken out for God” is to be expected (France 173), especially during Matthew’s time, when early Christians were persecuted heavily by Roman occupying forces (France 225). Jesus’s teachings stress that “physical violence, and particularly retaliatory violence, is incompatible with following [him]” (France 1013), though this does not necessarily imply that a good follower will live a completely peaceful life. Jesus’s teachings on non-retaliation do however imply that there is a “tendency of violence to recoil on those who perpetrate it” (France 1013). In this particular moment, Jesus strongly exemplifies the proper way to react to evildoers who commit violent acts against you; by giving in, and even chastising one of his followers for acting violently, Jesus fully submits to the will of his enemies, and shows his followers how to be “perfect, as [their] heavenly Father is perfect” (Matthew 5:48). In addition, Jesus demonstrates that one should not simply submit to the violence of one’s enemies because one should not react violently, but that one should submit because one is fulfilling the will of God, as Jesus does when he is arrested. The purpose of Jesus’s nonresistance to his arrest and subsequent crucifixion is to fulfill the will of God, for “[if] he had saved himself, he would not have been able to save others” (France 1070), and therefore, his followers should submit themselves and their lives to the will of God to save others as well.

While following God's will may ultimately require martyrdom, as it did for Jesus, this does not mean that the wicked will prevail. Davies and Allison argue, "Although God may not nip evil in the bud, ultimately good will out" (Davies and Allison 2:210). Jesus's followers cannot seek vengeance themselves, but Jesus promises that evildoers will meet their fate of violent punishment in the eschatological period, which seems at odds with Jesus's pacifism on Earth. This apparent contradiction can be explained through an examination of the differences of earthly beings, like humans, and supernatural beings, like God. While humans, including Jesus, are expected to avoid vengeance or any form of retribution, even through legal proceedings, God makes no such promise. In fact, Jesus promises vengeance in the eschatological period, explaining the eschatological expectation of vengeance in many of his teachings, including the Parable of the Hidden Talents (Matthew 25:14-30). This parable seeks to teach followers to actively use what they are given to do good works – such as making peace or giving to the poor. However, Jesus also emphasizes in this parable that those who fail to do good works "condemn themselves to eschatological darkness" (Davies and Allison 3:402). Additionally, while Jesus teaches that his human followers should overcome their natural desire for *lex talionis*, Davies and Allison emphasize that there is "...no genuine contradiction between the rejection of *lex talionis* and a belief that eschatological punishment will fit the crime" (Davies and Allison 1:540), implying that Jesus teaches that a supernatural being – in this case God – can and will get vengeance for evil, but that is not up to humans to do so. This leads readers to the concept of a vengeful, eschatological Jesus – one very much in conflict with his pacifistic, earthly presence.

The Expectations of the Vengeful, Eschatological Jesus

Jesus teaches his followers that sinners will be punished, and those who commit violent acts will be met with violence when it comes time for the final judgment, thus forming the vengeful,

eschatological view of Jesus. In fact, Jesus says to his disciples, “Do not think that I have come to bring peace to the earth; I have not come to bring peace, but a sword” (Matthew 10:34). In this statement, Jesus becomes a symbol of violence and division, quite the opposite of the non-retaliatory, pacifist ideal Jesus elsewhere emphasizes. Though the contradiction may be resolved with reference to Matthew’s occasional understanding of Jesus as a quasi-divine eschatological figure, the motif of a sword as a symbol for violence is prevalent in Matthew and in that literary context, Jesus’s use of it is somewhat ironic. For example, Jesus states at his arrest “for all who take the sword will perish by the sword” (Matthew 26:52). This means that although Jesus teaches submission to violence, he also teaches that those who perpetrate violence will not go unpunished, because they too will face violence and “perish by the sword” at the time of the final judgment. This is ironically demonstrated through Jesus himself, as he comes as the sword to divide people (Matthew 10:34), and then himself “perish[es] by the sword” (Matthew 26:52) when he is violently crucified.

France offers a complementary approach to the “sword” of 10:34: “the ‘sword’ can hardly be understood literally,” and instead can be understood as “a metaphor for conflict and suffering” (France 408). Jesus metaphorically represents a sword because his actions divide people and create violence and suffering through his assertion of God’s message, which guarantees violent backlash and even in some cases death for his followers. In fact, Jesus’s “whole experience [is] the opposite of a ‘peaceful’ way of life...[as] the way to peace is not the way of avoidance of conflict” (France 408). Therefore, while Jesus is not directly acting violently, he acts according to God’s will and teaches his followers to do the same, generating a violent response, and thus, albeit indirectly, causing violence as a sword would. Therefore, when Jesus is crucified, he faces violent punishment for bringing violence to the earth, and perishes by the very sword he brought. This is contrary to the

expectations of Jesus's purpose on earth, as "peace [is] a basic human aspiration, [and] it was understood to be the purpose of the Messiah's coming and the defining characteristic of God's eschatological rule," but this statement "is meant to shock" (France 408). According to Davies and Allison, "the main point is this: the time of Jesus and his church is not, despite the presence of the kingdom of God, the messianic era of peace" (Davies and Allison 2:218).

Jesus also emphasizes that those who follow him and act perfectly, as described previously, will be rewarded, but those that act violently or fail to do good deeds for others will face eternal punishment in Hell. For example, when he describes the final judgment, he states:

When the Son of Man comes in his glory, and all the angels with him...he will separate people one from another as a shepherd separates the sheep from the goats...Then the King will say to [his sheep], "Come, you who are blessed by my Father, inherit the kingdom"...[and] he will say to [the goats], "Depart from me, you cursed, into the eternal fire prepared for the devil and his angels"...And these will go away into eternal punishment, but the righteous into eternal life. (Matthew 25:31-46)

Here Jesus describes the final judgment in intense detail, and the punishment for sinners is an extremely violent one – burning in hell, as he commands the "goats" to "depart from [him]...into the eternal fire" (Matthew 25:41). The concept of "Hell" is repeated throughout the Gospel of Matthew, each time reminding the reader of the violent punishment that Jesus explains will occur there. For example, Jesus states that it is better to self-mutilate than to have one's whole body thrown into Hell, suggesting extreme violence in Hell (France 206). According to France, Hell is "the place of final destruction of the wicked...[whose] name *geëna* derives from the Valley of Hinnom...outside Jerusalem which had once been the site of human sacrifice by fire to [the god] Molech" (France 202). It is important to note that "eternal" in this context could have two different

meanings: either “[eternal] punishment which relates to the age to come” or “[eternal] punishment which continues forever.” If one considers the metaphor of fire in Hell, according to France, this eternal fire “suggests destruction rather than punishment...[and not] ‘punishment which goes on forever’ but ‘punishment which has eternal consequences,’ the loss of eternal life through being destroyed by fire” (France 967). However, Davies and Allison argue that Matthew “seems to show agreement with those who believed the damned would suffer for ever...The wicked would be ever dying, never dead” (Davies and Allison 1:515). While either of these interpretations is plausible, it is clear that either way, Jesus’s conception of punishment in Hell is one of gruesome and violent suffering.

Jesus further illustrates the type of punishment he envisions in Hell with a parable that he tells the chief priests and the scribes in the temple about the master of a vineyard and his tenants. The master rents his vineyard to tenants and leaves for another country, but when he sends three servants to collect his fruit, the tenants react violently and beat, kill, and stone each his servants. The master then sends a second, larger group of servants, which the tenants also treat violently. Then, the ever-forgiving master sends his son, expecting the tenants to respect his son, but they do not. Instead, they kill his son in hopes of collecting his inheritance. Jesus then asks the chief priests and scribes, “When therefore the owner of the vineyard comes, what will he do to those tenants?” (Matthew 21:33-40). Here, Jesus is clearly testing the chief priests and scribes, because while he preaches that his followers, or earthly beings, subscribe to a life of non-retaliation, he also emphasizes that God will seek vengeance for those who have sinned, as opposed to humans or the devil seeking vengeance. In fact, it is important to note that “there is no suggestion in biblical literature that the devil has the power of judgment, nor that God’s people should fear him...But a healthy ‘fear’ of God is a recurrent feature of [Old Testament] spirituality which the [New

Testament] in no way mitigates” (France 403). This suggests that God has the ultimate power and should be the only judge – one who is both revered and feared. The chief priests respond with these teachings in mind: ““He will put those wretches to a miserable death and let out the vineyard to other tenants who will give him the fruits of their seasons” (Matthew 21:41). Finally, Jesus replies, “Therefore I tell you, the kingdom of God will be taken away from you and given to a people producing its fruits” (Matthew 21:43). In this moment, Jesus again deploys the language of ultimate judgment to imply that a disciple could be sent to hell for both violence and uselessness to the kingdom of heaven (France 957).

Of course, the master in this parable is a symbol for the eschatological Jesus, or God, when he returns for the final judgment, the discourse on which this parable serves to tie up with “its portrayal of the Son of Man as the universal judge” (France 959). When the final judgment comes, God will sort the evil from the good – the “goats” from the “sheep” (Matthew 25:32). It is into these two groups that all people will be sorted, as Jesus’s teachings “[allow] for only two categories, the saved and the lost; there is no allowance for grades of good or evil” (France 966). The tenants who commit violent acts against the servants of God and God’s son, Jesus, are the evildoers or “goats,” and their punishment is “not merely eviction but ‘destruction,’ presumably referring to capital punishment for the murder they have committed...[a] punishment [that] fits the crime” (France 814). In the parable “[t]he owner’s patience will obviously have been exhausted by the murder of his son, and he will act according to the *lex talionis*: murder calls forth murder” (Davies and Allison 3:184), which illustrates this principle as it will apply to God’s eschatological judgment.

Matthew even later clarifies that the chief priests and scribes know that Jesus is using the tenants as a metaphor for them (Matthew 21:45), and “having just themselves uttered what will happen to those who killed the householder’s son, they now invite the same fate by scheming to kill

the Son of God” (Davies and Allison 3:187). Through this parable, Jesus allows the chief priests and scribes to come to the realization that their punishment for the violence they commit against Jesus and other Christians will be a miserable death in the form of eternal punishment, or fiery destruction. Notably, each of the Synoptic gospels explains the fate of the servants in this particular parable differently: in Luke, the three servants are individually “ill treated but none [are] killed” (France 812), whereas in Mark, only one of the three servants is killed and the others are beaten. However, in Matthew, one servant is beat up, another is killed, and the final is stoned, which “gives the order of the verbs – beat, kill, stone – ‘a climax, in which the third step is an atrocious species of the second’ (Bengel, *ad loc.*): stoning was a brutal and (especially in the Jewish and Greek worlds) shameful death” (Davies and Allison 3:182). This again emphasizes Matthew’s focus on violence, especially as compared to Luke’s treatment of this parable, which is inherently less violent.

This almost eager focus on violence during the eschatological period is a clear contradiction of the teachings of Jesus as an earthly being, which emphasize pacifism and non-retaliation. However, the differences in Jesus’s expectations for his followers and in how his role will take shape in the final judgment speak to the interactions between supreme beings, like God and the resurrected Jesus, and inferior beings, like humans – sinners and peacemakers alike. Only supreme beings are allowed to exact punishments on inferior beings without consequences. There is evidence that inferior beings cannot punish or harm each other by seeking vengeance, without facing violence from a supreme being, as previously mentioned in the discussion about the final judgment and its eternal and violent destruction of evildoers. However, if only God can punish evildoers without fear of violent consequence, Christian individuals and institutions influenced by Jesus’s teachings face an interesting challenge: how can humans prevent violence if they cannot retaliate, punish, or even seek non-violent legal redress? The following two sections seek to explain how these ideas have

interacted with or been outright ignored by human-organized legal systems in both medieval England and the modern United States.

Examining Medieval Legal Systems through the Lens of the Gospel of Matthew

Introduction

As Christianity spread, Jesus's teachings began to impact moral codes throughout all of Europe. When the Christian faith was adopted by the Roman Empire, those morals had a much larger reach than ever before. Furthermore, the Middle Ages brought the rise of strong monarchies throughout much of Europe, and although these monarchies were sometimes in conflict with the Church and the Pope, they often emphasized a moral code that was based in Christian teachings. Because of this, much of how medieval legal systems dealt with issues of violence, crime, and punishment had a basis, whether formal or informal, in Christianity.

For the purposes of this argument, I will examine the medieval English legal system – including both the ecclesiastical and secular courts – through the lens of Jesus's teachings on violence, judgment, and punishment in the Gospel of Matthew, which is foundational to Christian ethical and legal reasoning. Through the examination of a series of reforms throughout the medieval period, it is apparent that the religious and secular leaders were trying to implement a legal system that reflected Jesus's teachings, even though those teachings did not fully legitimize such a system. My analysis will have interesting implications for further consideration of our modern American legal system, as the English legal system gave birth to the common law tradition, which in turn was the foundation of the United States' legal system. Thus, an examination of the modern legal system also shows the struggle of modern jurists to operate within the constraints of Jesus's expectations and what is realistically feasible for humankind.

The Role of the Church in Medieval Law

During the medieval period in England, there was not a true separation of church and state, as there is in the modern United States. The Church was involved in everyday affairs, including even the affairs of the government and the monarchy. During the eleventh century, the Archbishop of Canterbury would sometimes choose the new king with the help of “a group of lay and ecclesiastical people” and would preside at the coronation (Jason 340). It was clear during the early eleventh century in England that the Church and the royal government were entangled. Even in the English legal system during this period, there were two types of courts: the ecclesiastical and the royal courts. The ecclesiastical courts were under the control of the Pope in Rome, who had the “supreme power...[and] was the supreme legislator, administrator, and judge” (Jason 345), while the royal courts were subject to the King’s rule.

During this time, the two systems “initially...maintained good relations...[but this] accord soon dissolved...resulting in a major conflict between church and state,” whose main point of contention was jurisdiction (Jason 341). At first, the jurisdiction of the ecclesiastical courts was unlimited and included many types of legal proceedings (Jason 351), including “matters of ecclesiastical economy; church property; ecclesiastical dues and tithes; marriage; divorce; legitimation; testate and intestate successions of personal property; contracts involving pledge of faith or oath; various crimes and torts” (Sherman 246). Of course, the broadness of the final category, namely “various crimes and torts,” leaves room for interpretation as to what types of crimes or torts belonged in the jurisdiction of the ecclesiastical courts, but - as Peter D. Jason, a law professor at the Thomas M. Cooley Law School, suggests – any “matters of morals” (Jason 351), including both criminal and civil offenses, could be tried in ecclesiastical courts. Therefore, “[t]he jurisdiction of the church courts was not distinguishable from that of the King’s Courts” (Jason

351). When claims of jurisdiction were made by both the ecclesiastical and the secular courts, the King's courts would issue a writ of prohibition, which was "primarily an instrument to prevent the ecclesiastical courts from exceeding their jurisdiction...[and the writ] prohibited...continuing the litigation in the church court" (Jason 352). However, the populace seemed to prefer church courts "because they settled matters quickly and at less cost [than the royal courts]" (Jason 352). This points to the struggle for jurisdiction and legal power during the early and mid eleventh century, but it is important to note that the "two systems cooperated" and that jurisdictional disputes mainly arose due to "the insistence of the individual litigants rather than...an official act of the Church or King" (Jason 353-354).

Despite the initial entanglement and cooperation of the Church and state, beginning under King William I in 1072, the legal system of England began to transition into a system in which "God's business was to be separated from Caesar's, with the appropriate renders being made in different courts" (Jason 341). King William I initiated a writ "[t]o increase the power of the monarchy...[by trying] to limit clerical independence...[while] the ecclesiastical courts were attempting to increase their own jurisdiction" (Jason 341-342). This culminated with the actions of King Henry II. Following his coronation in 1154, King Henry II attempted

to assert his own position of power by decreasing the power of the English bishops in whom the Pope's authority was vested...[and] arranged for his friend and chancellor, Thomas Becket, to be appointed Archbishop of Canterbury. Becket, however, displayed little loyalty to the King after he was appointed. Further, Becket insisted on the enforcement of certain prerogatives of the church and clergy that had previously been ignored. In retaliation, Henry published the *Constitutions of Clarendon* in 1164...The King's public action forced the Pope to take an official stance; consequently the Pope condemned ten of the [sixteen]

Constitutions, four of which concerned the jurisdiction of church courts. The ensuing struggle had no winner. Becket was murdered and Henry was forced to repent and submit to the authority of the Pope. As a result, church courts, with the right of appeal to Rome, became firmly established in England. (Jason 343)

Additionally, “[g]iven that the King was ‘a Christian and hence a subject of the pope one would have thought that the pope...would only have to admonish an English king that unless he yielded to the Holy Church’s jurisdictional demands he would be damned in hell” (Jason 344). However, while the courts were firmly established, “the Church lacked the power to enforce its decrees” (Jason 344). This meant that the King and the royal courts were able to maintain their power and control to some degree; thus the legal system remained ecclesiastically and secularly intertwined.

Canon Law

Because of this power struggle over jurisdiction, the courts, both secular and ecclesiastical, had several connections in terms of their laws and procedures. One such connection was that of canon law, which “stood at the crossroads of religion and justice” (Carruthers):

The birth of canon law was...an attempt to codify the Church’s rules going back to the earliest ecumenical councils, in order to make it clear in what areas of social and religious life the church considered its authority to be independent of that of kings, and furthermore, to define what was binding on Christians in the Church’s own terms. (Carruthers)

In canon law, the Church created its own legal system. However, while “[t]he origins of canon law go hand in hand with the development of ecclesiastical institutions...civil and religious laws...gradually became intertwined...and it was only from the mid-twelfth century onwards that the need arose to clarify the distinction between civil and religious law” (Carruthers). This shows that before the twelfth century, there was no need to distinguish between the two systems, either in

jurisdiction or in law. Therefore, many of the practices and customs, such as canon law, were intertwined and survived in both systems after their separation in the twelfth century.

As the ecclesiastical and secular courts began to separate and distinguish themselves, battling for jurisdiction, it became clear that they each needed codified laws. However, while England already had codified secular laws, they were never entirely separate from canon laws. “The first Anglo-Saxon law code was issued by England’s first Christian monarch Æthelberht, King of Kent (c. 580-616)” (Carruthers), which predates the struggle for power between the Church and the monarchy, and therefore the conception of canon law as distinct from secular law. Once the two systems began to separate by the mid-twelfth century, Gratian, “[who] appears to have been a monk and a papal lawyer...[and] who became known as the ‘father’ of canon law” codified canon law in his influential book called the *Concordia Discordantium Canonum*, or the *Decretum*, as it came to be known (Carruthers). The *Decretum* was important in the legal field, and spread across medieval Europe, “where it became the basic text for law students...[and] remained in force all through the later Middle Ages and well into the modern period, down to the Roman reform of canon law in 1917” (Carruthers). Thus, even though the ecclesiastical and secular courts began to separate, because law students still studied Gratian’s codified canon law, the Church’s law remained entangled in the secular courts.

Clearly, canon law, despite being to some extent separated from the secular legal system of medieval England, was an important influence on the legal systems during the medieval period. While it has been “argued [whether] both lay and ecclesiastical courts believed that the Canon Law was persuasive, but not binding” or whether they believed it was wholly binding (Jason 353), it is clear that it was highly influential throughout the legal field during this period, even if its laws were only viewed as persuasive precedents.

In fact, in the Gospel of Matthew, Jesus seems to sanction the creation of an ecclesiastical legal system, and he allows for excommunication if a defendant does not attempt to right his wrongs after several warnings from both private and public sources, including Church members (Matthew 18:15-18). In this passage of Matthew, Jesus promotes a form of justice by stating that humans could punish a wrongdoer with excommunication if he did not right his wrongs. However, Jesus does not sanction any punishments imposed by humans other than excommunication, especially ones that are violent, and he only sanctions excommunication after multiple warnings. In this way, Jesus sanctions only justice systems that impose nonviolent punishments and seek to address wrongs within their local community, such as their Church.

Because the ecclesiastical legal system, and in part canon law, stemmed from the beliefs and teachings of the Church, which stemmed from the Bible and, more specifically, the Gospels, Jesus's teachings had an impact on the ecclesiastical legal system of the Middle Ages. Moreover, because the ecclesiastical system and canon law influenced the secular legal system due to their initial entanglement, Jesus's teachings also indirectly influenced the secular legal system of that time (Sherman 95). However, while canon law promoted the expectations of the Church, which were based in part in Scripture, these did not always align with Jesus's teachings in the Gospel of Matthew, as I will show in my discussion of judgment and punishment in medieval England. Indeed, the very fact that the Church created a legal system with its own laws that it could apply through human judicial proceedings and use to inflict violent punishment was in some ways contrary to Jesus's teachings that punishment should ultimately be left to God. The Medieval Church and the ecclesiastical legal system were struggling to apply Jesus's teachings in a practical sense to their present world, and they were not always successful in their applications.

The Feudal System, Violence, and Law

In the ninth and tenth centuries in medieval Europe, the feudal system began to develop, bringing “violent customs [that] replaced the old order of public justice” (Bisson 6). The “Feudal Revolution,” as Bisson coined it, “pointed to a devolution of power...with kingdoms fracturing progressively into principalities, counties, then most critically – at the end of the tenth century – into castellanies” (Bisson 6). This culminated in “a novel and radically feudalized social order by 1060” (Bisson 7) – around the time that Gratian codified and published the *Decretum*. Within this new social order, while “castle-generated violence” (Bisson 7) was prevalent, “there was, in some sense, public order in the tenth century” (Bisson 9). In fact, “Adso of Montier-en-Der [a Benedictine monk and abbot] deplored the emergence of ‘tyrants’ violating ‘rights and statutes of laws’ in Burgundy after the death of Richard the Justiciar (d. 921), evoking the absence of ‘king’ or ‘judge who wished in true justice to resist this wickedness of impious men’” (Bisson 10). This statement clearly provides evidence that there was a sense of justice and social order during this time, and that the violent actions of the feudal “tyrants” went against this order. In addition, the use of the word “impious” implies that the violence of the feudal “tyrants” went against a social order presumed to be based in religious beliefs or religious morality, like the morality taught by Jesus in the Gospel of Matthew.

Within the feudal social order, it became common “to subjugate by...violence,” but this practice was most commonly used by powerful lords who owned castles, as castles allowed a sense of fortification against intruders or rebellious peasants (Bisson 16). In fact, “[t]he unfortified dominations exercised by rich peasants or horsemen fell into dependence on castles or disappeared” (Bisson 16), proving that one could only maintain control and power through the use of castle-generated violence during this time. In addition, the Oath of Beauvais, taken by knights, provided a

path for a knight to act “as policeman, warrior and lord,” thereby giving him significant societal power. It allowed knights to act violently in certain situations, as outlined by Thomas N. Bisson, a medieval history professor at Harvard University:

For example, the knight promises not to break into sanctuaries “on excuse of protection, unless on account of some malefactor who has broken this peace or on account of a homicide or...of the seizure of a man or horse...[a knight] shall not forcibly burn or destroy houses unless [he finds] an enemy horseman or robber inside and unless they should be joined to a castle or serve as a castle...[a knight] shall not destroy a mill or seize the grain in it, unless [he] should be in a cavalcade or an army [*hostis*] and unless it should be in [his] land.” (Bisson 20)

Each of these oaths provides an exception in which the knight is allowed to act violently, especially if there is an enemy threat. While these oaths allow for some violence unlike Jesus’s teachings, they also set limitations on that violence, perhaps in an attempt to bring it somewhat in line with Jesus’ ethical teaching. In addition, by not retaliating or violently punishing the knights for their violence, the legal systems did, in fact, respond appropriately according to Jesus’s teachings. However, Jesus makes only makes exceptions for violence when supernatural beings perpetrate it, and therefore Jesus would not allow these exceptions for the violence of knights in the feudal system. This castle-dominated feudal social order was the root of the modern Castle Doctrine, which I will discuss in the final section of my argument on modern law. Castle Doctrine serves as an example of how we have in some ways added more exceptions for violence, thus further separating modern laws from Jesus’s teachings.

Despite the new and violent social order of the feudal system, “expressly legal proceedings persisted in the tenth century.... [T]he courts offered remedies to all on the basis of prescriptive

authority expressive of God-ordained regalian power” (Bisson 11-12). During this time, the legal system prevailed, but as discussed previously, the ecclesiastical and secular courts were intertwined, and the courts were believed to have power due to God’s sanction – whether through the divine right of the King or the Pope. However, the power of public authorities like the King and the Pope was challenged by the power of local lords. This power came through violence, which was “normal in the feud, a system of customary vengeance rooted in kin right, [and] which public authorities could only hope to channel, hope to limit the dangers it held for the innocent” (Bisson 13). Violence was not heavily contested by judicial authorities, and remained a regulated means of feudal tyrants’ advantage over and revenge against their enemies.

This type of legal system that permits violence is not sanctioned in Jesus’s teachings, as Jesus repeatedly taught that any violence would subvert God’s will, and therefore, that his followers should submit to God’s will by not seeking vengeance or retribution, even if their enemies acted violently. Instead, according to Jesus, one should pray for one’s enemies and seek to make peace. While the violence of this period was certainly not promoted by the legal systems, the violence did operate within the “regalian legal order” (Bisson 14), therefore implying it was permitted by both secular and ecclesiastical courts. Jesus would certainly not have sanctioned such violent acts, but his teachings arguably imply that the legal systems attempting to develop his teachings into practical social guidance respond appropriately by turning the other cheek and allowing the violence to continue, instead of responding with retaliatory or retributive violence. This may show that within their struggle to apply Jesus’s teachings practically, the legal systems actually got it right in this context. They allowed the violence to continue, while trying to regulate it and limit its effects on the innocent, rather than using more violence to counter it. Notably, even churches and religious institutions relied on castle-generated violence and “lay lords for protection...[because] in this age

they had no choice. [It was better] to harness violence at a price than to give it free rein” (Bisson 17). This is yet another example of how medieval jurists struggled within their social order to create a legal system that effectively dealt with this violence while also following Jesus’s teachings in Matthew. By not fighting the violence with more violence and instead harnessing it in an attempt to protect innocent lives, they were mostly able to follow Jesus’s teachings.

While the medieval legal systems’ struggle to deal with this violence arguably shows their attempts to follow Jesus’s teachings, the feudal lords’ violence shows that they made little effort to stick to their oath. Those in power were legally allowed to use violence to maintain their control and oppress others. In fact, during the late tenth and early eleventh centuries, scribes began “to change their vocabulary of power: the term *miles* in the unclassical sense of ‘horseman’ was introduced, together with an adjusted sense of *caballarius*; while *dominus*, hitherto reserved for God, kings and bishops, and lately applied to counts, was henceforth descriptive of masters of castles” (Bisson 22). Perhaps it was the usage of *dominus* as a word for masters of castles that led to a justification of the castle-generated violence – by connecting masters of castles to the connotation of ultimate and even godly power of the word “*dominus*.” The violent control of “exploitative lordship” was further supported ideologically by Christian beliefs: “Had not the Apostle himself admonished servants (*servi*) to submit to lords in all fear, ‘and not only to the good and gentle but also to the wicked ones [1 Pet. 2:18]’?” (Bisson 31-32). It is through the same moral principles outlined in Jesus’s teachings that the lords and knights justified their violent and oppressive behavior, which was not the intention of those teachings. While it is true that Jesus expects servants, and all of his followers, to face the persecution of their masters and not retaliate because that would fulfill the will of their ultimate master, God, the knights and lords that act violently act against Jesus’s expectations. Therefore, this implies that the knights and lords would eventually face God’s judgment and

punishment for their violence, according to Jesus's teachings in the Gospel of Matthew, while the servants would be rewarded for meeting Jesus's expectations of their submission to persecution and violence. Again, this demonstrates the struggle of human beings to practically apply Jesus's high expectations.

Even within the justice systems – both ecclesiastical and secular – the lords and their knights maintained power. Bisson states, “Although some in England suspected Normans, Bretons and Flemings were responsible, there was nothing specifically French about such oppressive behavior. Everywhere in the medieval West men appointed to guard castles, collect customary revenues and keep local order behaved...as aggressive lords replicating the predatory methods of the early castellans” (Bisson 36). This demonstrates that while feudal power was more prevalent in medieval France – mainly because the English king was better able to control most of the power – the English government did face the threat of feudal violence, and even feudal judicial interference. For example, “in the middle ages, judges and juries faced both physical and financial incentives to cater to the preferences of local feudal lords” (Glaeser and Shleifer 1195). Obviously, as this created a system in which violence equated to power, the lords held power even in the legal system. However, because feudal lords in England were less powerful than the king, and therefore, “more afraid of the king than of their neighbors...they were willing to pay the king to allow them to resolve disputes locally” (Glaeser and Shleifer 1196), which meant that feudal violence had less power over the legal system in medieval England than in other countries. This was critical in the formation of legal systems in the Middle Ages, and it created the division between civil and common law systems. In addition, the power of the King in England over the local lords enabled the legal system to better regulate their violence.

Analyzing Representations of Violence in Medieval Literature

Despite the feudal reputation for violence and vengeance, it is clear that not all people in medieval England perpetrated violence, as “always the norm or appeal [of human social order] is to peace” (Bisson 10). In fact, the social order at the time, while being dominated by feudal violence, continued to seek peace and righteousness, as evidenced by anecdotes and literature. For example, this is demonstrated by a story, “the *Miracles* of Saint-Maximin of Trier,” written in 964, in which the victims of feudal violence act as Jesus teaches they should in the Gospel of Matthew. In the story, after a “‘rich and noble’ man named Bernacher...unjustly usurped for himself little fields of the poor men” through violence, the victims of his oppression and persecution prayed to God and St. Maximin that Bernacher “‘...make do with what he had and not despoil them wickedly of their tiny possessions.’” However, Bernacher would not settle for his riches, and the “peasants called on their saint, who obliged with a suitably terrifying prodigy that brought their master to his senses and ended his persecution” (Bisson 14-15).

In this story, Bernacher clearly represents the feudal lords, who used violence to fulfill their greedy desires and maintain control over their land and their servants. The peasants are persecuted and oppressed through this violence, much like the servants during the feudal period. However, instead of reacting violently with a revolt or an uprising, the peasants in the story “pray for [he] who persecute[s [them]]” (Matthew 5:44) as Jesus teaches his followers to do, by praying to God and a saint, who in turn threatens Bernacher with a “terrifying prodigy.” This story follows Jesus’s teachings in Matthew closely, as it even leaves the judgment of the “evildoer” to a supernatural force. In addition, the saint does not condemn the greedy lord to a violent punishment, instead encouraging him to correct his wrongs, albeit rather threateningly. While this is only a story, it reflects the social revolution that occurred during this time, and how violence came to define power.

However, despite the violence of the medieval feudal period, there was an emphasis in society and in literature – as with the aforementioned political appeals to peace within the social order and this story – on the peaceful and nonviolent responses to enemies that corresponded with Jesus’s teachings.

In addition, a fable – written by Jean de Marmoutier around 1180 – details an encounter between a count, Count Geoffrey of Anjou (1129-51), and a peasant, who does not recognize the count and tells him details of the oppression he faces at the hands of the local ministers. The peasant describes “how at harvest time the provosts ‘go out to the villages and, forcing the peasants to assemble, by a new law – or rather, violence – they impose a grain tax on them’” (Bisson 34). The provosts, or ministers, “demand from each as much as they can, dragging to court on false charges any who complain, from which the only escape is paying off the ‘wicked judges.’” The count, in an attempt to right the social wrongs that have occurred, rewards the “peasant-informer” and holds what “is virtually a trial” in which he judges the provosts and exacts their punishment (Bisson 34). Again, while this fable is a work of fiction, it has a strong basis in medieval history. According to Bisson, it “is no caricature...[and] is symptomatic, indeed informative, on three critical points: (1) the continuity of arbitrary lordship; (2) the identity of those who served lord-princes in their domains and the nature of their service; and (3) the nature of their accountability” (Bisson 35). It is also interesting to note that this fable parallels eschatological judgment, in that the patient and submissive peasant is rewarded, while the oppressive and wicked ministers are punished when the master comes to judge.

However, there is another way to read this story. The judge in this instance is not God; instead, it is a human master that comes to judge other humans and impose punishment on them, which Jesus does not permit in his teachings in Matthew. It is through fables such as this one that

the connection between counts or earthly masters and God is both questioned and perhaps strengthened. Such tales can be used to justify human judgment, which Jesus specifically prohibits in the Gospel of Matthew. Regardless, it is clear that the literature of this time reflected the true nature of feudal lordship and the violence that many servants were forced to endure without retaliation on the pretense that they were serving both their earthly masters, the lords, and their heavenly master, God.

Judgment and Punishment in Medieval England

Because there was an established – albeit ecclesiastically entangled – legal system in early medieval England, the government clearly believed that their social order should include judgment and punishment for those that violated social customs or laws. However, Egon Bittner and Anthony M. Platt argue, “If to commit a crime means to offend society [by violating social customs or laws] then it is not at all clear what the dues shall be that will expunge the offence and restore the violated order to its original state of integrity” (Bittner and Platt 81). In the limited abilities of humankind, “crime and punishment do not stand in a reciprocal relationship...Rather, they are, in a sense, analogous actions demonstrating that two wrongs can make a right” (Bittner and Platt 81). Of course, this is not what Jesus teaches – he expects his followers to right wrongs in a positive way, by doing good for those that wrong them and actively making peace. However, in addressing the issue of crime, especially violent crime, from a human perspective, Jesus’s teachings are not straightforwardly practical.

It has been argued since the development of the earliest societies that there is a “larger interest” that the state is responsible for protecting through laws, judgment, and punishment, creating a “right to punish” for state authorities (Bittner and Platt 88). In addition, it was argued by Tudor theorists that crime was “an offense against God, a source of communal pollution which,

should the criminal be long unpunished, threatened to bring divine wrath down upon the entire commonweal” (Broude 48). In fact, it was the development of the medieval English legal system that “highlight[ed] the last step in the definition of the state’s right to punish...The concept...derived from the fact that an offence was an affront against the monarch carried over from the middle ages to absolute monarchy” (Bittner and Platt 88). Tudor theorists even argued:

[While] God was understood to have reserved to Himself the punishment of those who offended him by transgressing...[only] in exceptional instances...was his direct intervention required; for run-of-the-mill cases, God was represented as content that mundane retribution be effected by the king and magistrates, whose offices had been ordained by God for that very purpose. (Broude 48).

However, it is clear in the Gospel of Matthew that Jesus reserves judgment and punishment for God only, and he expects that any violent punishment should be imposed by supernatural – not human – forces, as human are expected to treat each other with love and kindness, not vengeance or retribution.

The medieval English legal system, over time, not only moved further from Jesus’s teachings in its applications of punishment, but also in its more general view of the law. During the medieval period, a supporter of common law, Sir Edward Coke, argued “the law has ‘an independent existence of its own, set above the king as well as his subjects, and bound to judge impartially between them’” (Bittner and Platt 88). This implies that the law holds a position like that of God – able to see and judge and punish all, without any need for human involvement. It is not realistically feasible for human beings to implement a system that is as fair and impartial and omniscient as God, as any system developed by humans would inevitably rely on human judgment. Jesus does not permit this type of judgment in his teachings, and he does not trust humans to inflict

violent punishments on one another. Therefore, the systems that humans created could not replace God's judgment and, because of this, they should not, according to Jesus's teachings, punish wrongdoers with violence.

Often, especially during the medieval period, punishment was extremely violent. Punishment was typically very public, as "[l]egitimate, judicial violence was deemed essential in the fight to suppress illegitimate random violence...Mutilations sent out a message of warning and deterrence; executions offered the ultimate guarantee against repeat offenders" (McGlynn 54). In addition, it has been argued that there are two main justifications of punishment: the principle of retribution and the principle of deterrence. Often, retribution is associated with revenge, but "[i]ts conditions are not satisfied by giving vent to personal desires for vengeance...[instead] society has a moral right and duty to inflict punishment on offenders who consciously commit crimes" (Bittner and Platt 89-90). Kant argues:

Judicial punishment can never be imposed merely for the purpose of securing some extrinsic good, either for the criminal himself or for civil society; it must in all cases be imposed (and can only be imposed) because the individual upon whom it is inflicted has committed an offence. (Bittner and Platt 90)

Kant's argument shows that retributive justice does not justify punishment for the sake of society when the victim of such punishment has not done anything to deserve it. Thus, the principle of retribution does not allow the punishment to exceed what would be just given a specific offence. In addition, retribution "suggests just or deserved punishment, often without personal motives" (Broude 38). Despite this, the principle of retribution does not follow Jesus's teachings, as Jesus does not allow even retribution based on fairness; instead, Jesus prohibits retribution by human

forces entirely, especially in instances of violent punishment because, as mentioned previously, Jesus does not trust humans to implement their judgment fairly and impartially, as God does.

On the other hand, the principle of deterrence seeks to prevent future crimes, while “provid[ing] the maximum of happiness for the greatest number of people” (Bittner and Platt 92). This implies that “all punishment is in itself evil...[and if] it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil” (Bittner and Platt 92). This belief is more closely aligned with Jesus’s teachings of actively making peace and his rejection of humans punishing other humans as wrong; therefore, its use would promote the expectations Jesus sets out for his followers.

Canon Law and the Ordeal

Though Jesus does not sanction human judgment and violent punishment in Matthew, because social customs and laws were often derived from Christian customs and canon law, the Church was, at least in the early medieval period, deeply involved in matters of judgment and punishment. For example, until 1215, priests were involved in a form of judgment known as the ordeal: trial by ordeal included trial by water, fire, or battle – each of which were extremely violent, and each of which were officiated by members of the clergy. The bishop supervised the ordeal, while a member of the clergy “blessed the elements used in it and gave communion to the proband,” in addition to uttering “priestly incantations” (McAuley 483). The ordeal was “designed to facilitate successful prosecutions in cases where there was overwhelming circumstantial evidence against the defendant” (McAuley 484), especially in response to the Roman tradition of requiring the testimony of two eyewitnesses, known as the adversarial principle (McAuley 475). Instead of relying on witness testimony, the ordeal, whether by water, fire, or battle, relied on “*judicium Dei*” or God’s judgment. If a defendant survived the ordeal, it was presumed that God judged him as innocent. For

example, in trial by water, a defendant's legs were bound and he was thrown into water. If he floated, God had saved him, implying he was innocent. If he drowned, it was presumed that God had judged him as guilty and that his drowning was his punishment.

However, this posed an issue for religious leaders, as it relied on an "unwarranted temptation of God" and "lacked a secure foundation in the Scriptural and legislative sources of Church law" (McAuley 474). Indeed, Jesus, when tempted by Satan to jump off the pinnacle of the temple, states, "Again it is written, 'You shall not put the Lord your God to the test'" (Matthew 4:7). This suggests that Jesus would not permit the use of God's judgment in this instance, as it would constitute testing God, and the ordeal was clearly not how Jesus envisioned the final judgment in the Gospel of Matthew, or in any of the gospels for that matter. Therefore, while the ordeal claimed to rely on God's judgment, it did so in a perverse way – a way in which Jesus clearly did not intend. Additionally, for those defendants who were not miraculously saved, the ordeal served as a violent and painful punishment that was brought on by humans, not God – a punishment that Jesus would not condone. However, the attempt to use God's judgment shows that medieval jurists were trying, albeit failing, to apply Jesus's teachings in a practical sense to their present world.

Because the ordeal did not have firm religious or scriptural sanction, Pope Innocent III banned priestly involvement in this process in 1215. This led the secular legal system to also abandon the ordeal, resulting in the complete abandonment of a violent "practice which had been an integral part of judicial procedure throughout Western Christendom for over three centuries" (McAuley 474). Ultimately, this created a need for new procedures to deal with crime and to enforce laws, which resulted in the use of human judgment, as opposed to Godly judgment, in the legal systems. Additionally, Pope Innocent III's ban of clergy involvement in the ordeal and the

subsequent secular abandonment of the practice was a part a “procedural revolution...[that] was more than a drive for greater efficiency in the administration of criminal justice” (McAuley 476). This revolution “originated in the *Dictatus Papae* of Pope Gregory VII, which “[committed] the papacy to a programme of spiritual renewal of the clergy which included the systematic disentanglement of ecclesiastical and lay interests” (McAuley 476). The introduction of human judgment “marked the beginning of the end of the medieval jurists’ reliance on appeals to the supernatural as a means of solving hard cases” for both the secular and ecclesiastical courts (McAuley 497).

In all of Western Europe, with the exception of England, the abandonment of the ordeal led to the use of trial by inquisition. However, in England, God’s judgment in the ordeal was replaced with the judgment of one’s peers in a trial, initially “in criminal cases by a jury of presentment, the precursor of the trial jury” (McAuley 474). Of course, this transition to human judgment also did not align with Jesus’s expectations, though it was clearly less violent than the ordeal, therefore bringing the medieval English legal system a small step closer to Jesus’s expectations. However, even as the medieval English legal system transitioned from *judiciam Dei* to human judgment with the abandonment of the ordeal, this “criticism of the ordeal was neither a harbinger of secularization nor the symptom of a crisis of faith; it took place within the tradition of religious belief not in opposition to it” (McAuley 477). The use of the ordeal was criticized because “it was devoid of Scriptural sanction,” which was important to canon law practices, as they “rest on a foundation of Biblical authority” (McAuley 477-478). Even if one strictly looked at Jesus’s teachings in the Gospel of Matthew on violence and human judgment or punishment as the guiding foundation for canon law, it is abundantly clear that practices like the ordeal were without Jesus’s sanction.

Furthermore, while there is one passage in the Book of Numbers “which appeared to sanction recourse to the ordeal of bitter waters in cases of adultery by a wife...as both the Old and New Testaments were otherwise silent on the subject of ordeals, the slender authority provided by the Book of Numbers did not survive the rigorous dialectics of canonists” (McAuley 478). However, based on the custom of the ordeal and the loose support provided in the Book of Numbers, several canons were written in support of the ordeal. To deal with this issue, several canonists sought to “[compare and contrast] the problematic canons with the broad swathe of papal statutes opposed to the ordeal,” many of which were based in Scripture. In fact, Gratian, in his *Decretum*, or as it was originally known, *Concordia discordantium canonum – A harmony of conflicting canons* – sought to “reconcile conflicts of authority as best he could, without doing undue violence to the sources” (McAuley 480). While there was some canonical support for the ordeal, it is clear that the ordeal went against a majority of the moral principles that eventually became canon law, and therefore, its abandonment by first the clergy and eventually the secular authorities was an effort to use more humane and scripturally sanctioned legal practices.

While the medieval English legal system certainly was not entirely faithful to Jesus’s teachings in Matthew, the abandonment of the ordeal pushed the system towards a more faithful representation of those teachings, at least in terms of the use of human violence to punish others. While the abandonment of the ordeal also meant the abandonment of the use of God’s judgment, it showed the medieval legal systems’ struggle to practically, yet faithfully apply Jesus’s teachings to the real world through a series of reforms. It seems that with each reform, the legal system at least attempted to better meet Jesus’s expectations. In this case, the abandonment of the ordeal left behind the unsanctioned temptation of God and attempted to substitute human judgment and punishment, which resulted in a potentially less violent and more objective legal system.

The Transition to the Use of Human Judgment

In the Ecclesiastical Courts

Turning first to the ecclesiastical courts, one finds that there were several attempts to institute human judgment in their procedures to replace any reliance on the ordeal: first, the *exceptio criminis*, which “was a procedural device [that] parties to a lawsuit could use to disqualify the evidence of an opponent or hostile witness. In essence it was a claim that the person named in the *exceptio* had committed some specified crime and hence could not legally institute a lawsuit or testify in one” (McAuley 486). When a party used the *exceptio criminis*, there would follow a “hearing...[much like] a criminal trial to determine whether that person was guilty of the offence as charged,” which would take place in front of a judge. However, even if the person was found guilty through the hearing process, this “did not result in the infliction of punishment...its principal effect was to bar participation in the main action” (McAuley 486).

Additionally, the ecclesiastical courts used a procedure called the *denunciatio evangelica*, which “had three steps: fraternal admonition, public rebuke, and, in the event that these proved inefficacious, the matter could then be taken up by the ecclesiastical courts” (McAuley 487). Each of these steps stems from Jesus’s teachings on forgiveness: “If your brother does something wrong, go and have it out with him alone, between your two selves...but if he refuses to listen...report it...to the community” (Matthew 18:15-17). Through this procedure, a judge would determine the guilt of the person named in the *denunciatio*, but this also did not often result in punishment, as the judge most commonly would “make an order directing the defendant to mend his ways in the future,” or alternatively, and more closely aligned with the idea of punishment, “order the person...to make amends to those he had injured or risk continuing excommunication” (McAuley

487). While the threat of excommunication was a serious threat equivalent to a punishment, it was not a violent punishment, like that of trial by ordeal, and the order to make amends or to behave better in the future is more closely aligned with Jesus's teachings on active peacemaking. Therefore, the use of *denunciatio evangelica* better met Jesus's expectations for dealing with defendants, as it attempted to both make peace and left ultimate judgment and punishment to God, as opposed to human beings. Additionally, Jesus teaches that as long as the person bringing the suit addresses the defendant privately first, the public denunciation or hearing was permissible.

Finally, the ecclesiastical courts also used a procedure known as *per notorium*, in which the defendant would not have the opportunity to present a defense and the outcome of his case would entirely depend on how widely it was known that he committed a wrong. It was assumed that if it was widely believed that the defendant committed the crime with which he was charged, there was no need for evidence – the notoriety of his crime was enough to submit him directly to judgment and punishment. This type of criminal procedure represented “[a] striking example of the papal party’s determination to deal with the problem of concubinage...[as] this arrangement effectively neutralized all of the due process guarantees built into the traditional *ordo iudiciarius* [which outlined the rights of the defendant]; and was criticized on this account by the glossators as ‘very difficult and dangerous’” (McAuley 488). Of course, this procedure was far from Jesus’s teachings, as the judge “often had to determine the issue of guilt or innocence by a process of inferential reasoning from the facts as he determined them, thus placing human judgment at the centre of the judicial process” (McAuley 488). In addition, this type of procedure would require an omniscience that is reserved for only God, and exemplifies why Jesus prohibited human judgment in his teachings; he did not believe that humans were capable of being fair and impartial in their judgments of each other, and that is exceptionally apparent in this type of legal proceeding.

While my examination of Jesus's teachings did not justify the use of human judgment, Pope Innocent III's "appeal to the authority of the Scriptures...showed that both the Almighty and His messenger on earth had resorted to the *processus per inquisitionem*, and thus provided an authoritative basis for investing contemporary ecclesiastical judges with comparable powers when pursuing those widely suspected of wrongdoing" (McAuley 493). Of course, my analysis shows that this is not the case, though my analysis was limited to the Gospel of Matthew, and perhaps a more full analysis of the Bible and Jesus's teachings in the other synoptic gospels would support the idea that the use of human judgment to implement violent punishment was acceptable in certain circumstances. However, in the Gospel of Matthew, Jesus does not allow humans to subject others to violent punishment based on their own judgment; thus, judges during the medieval period did not have "an authoritative basis" for using their own judgment and implementing violent punishments on others, as Pope Innocent III suggests. Jesus instead holds his followers to an extraordinarily high standard and asks them to leave vengeance to God, which R.T. France suggests is not even truly practical.

The "reform package" of Pope Innocent III also included legislation called *Sententiam sanguinis*, which pushed the ecclesiastical system further away from Jesus's teachings. Finbarr McAuley states:

[The *Sententiam Sanguinis*] sought to outlaw clerical involvement in a range of activities connected with the shedding of blood...[and] was principally concerned with clerical involvement in the infliction of blood *punishments*, thereby reflecting the Church's growing concern with the increasingly sanguinary nature of the criminal sanction in the secular courts (in which, lest it be forgotten, the judicial function was often discharged by clerics), in

contrast with its own attempts to fashion a penology of repentance and reform more in keeping with the spiritual mission of priesthood. (McAuley 501-502)

This legislation was enacted to protect clergy members from “becom[ing] complicit in the mortal sin of homicide” (McAuley 504), but it allowed special privileges of protection for judges and soldiers when it came to homicide, which were also outlined in the law of homicide, therefore justifying some forms of capital punishment and creating a sense of “immun[ity] from the moral danger associated with joining in a collective killing” (McAuley 505). This immunity was granted to judges and soldiers alike by the Latin Fathers of Late Antiquity, and as canonists and theologians followed suit, it trickled down to Gratian, who also agreed that there are some homicides that are justified: namely, “killings done pursuant to the law or by soldiers when repelling an enemy attack...[or] a man [who] accidentally let a spear fly from his hand” (McAuley 505). However, it is clear that Jesus does not make these assumptions, and therefore, anyone complicit, whether directly or indirectly, in the killing of another is not “regarded as being free of the taint of homicide” (McAuley 505), and is liable to face God’s judgment and punishment in the eschatological period. It is also clear, though, that the medieval jurists were attempting to meet Jesus’s expectations, but they were struggling to apply his teachings practically.

In the Secular Courts

The secular medieval English courts also instituted human judgment, creating a legal system that centered on human judges and juries that determined the guilt or innocence of a defendant under King Henry II in the twelfth century (Glaeser and Shleifer 1198). At its conception, “the jury was an assembled body of local notables who would inform itinerant royal judges of local facts...[and] was responsible for providing *vere dicta* (true statements) and not actually given control over the outcome of the case” (Glaeser and Shleifer 1198). However, as time went on,

“there was a gradual movement to ensure that judges could not convict without the consent of a jury...[because] King John agreed that he and his subjects were to be governed by rule of law and that ‘no person may be amerced (i.e., fined) without the judgment of his peers’” (Glaeser and Shleifer 1199). This created the foundation for the jury trial, as well as due process of law, and eventually “jury nullification, whereby juries systematically refused to convict suspects of crimes when the penalties were seen as excessive (such as a hanging for theft of value above one shilling)” (Glaeser and Shleifer 1199). This formed an evolving standard of decency within the secular courts, much like that of the reform of clerical practices at this time in the ecclesiastical courts. Both systems faced a movement toward human judgment, but the secular courts were less restricted in their use of human judgment, as they were not bound by canon law or scripture, therefore resulting in a legal system that more exclusively focused on law and order through human judgment and punishment.

However, while the secular courts were not bound by scriptural sanction, like the ecclesiastical courts, much of canon law and religious doctrines influenced them, and therefore, their use of human judges and juries is also subject to scrutiny under the lens of Jesus’s teachings in Matthew. Even secular jurists faced the challenge of addressing Jesus’s prohibition of human judgment: “Having grown up with the idea that only God could fathom the truth in cases where direct testimony by witnesses was lacking, the argument is that the contemporary jurist was psychologically incapable of substituting human for Divine judgment” (McAuley 508). Therefore, the scriptural emphasis on supernatural judgment led to two manifestations that were significant in the development of medieval secular legal systems: “[f]irst, the city states passed legislation effectively prohibiting the use of circumstantial evidence in criminal cases...[and second] the civil

authorities opted for a rigid system of objective proofs in lieu of a process of inferential reasoning based on circumstantial evidence” (McAuley 508).

The prohibition of the use of circumstantial evidence in the secular courts allowed them to circumvent the teachings of Jesus in the Gospel of Matthew, as they promoted the use of hard facts over human judgment. However, the secular legal systems, especially in medieval England still relied somewhat on human judgment, mostly in interpreting the hard facts and applying them to the softer rules of law. As Edward L. Glaeser and Andrei Shleifer argue, “common law [that of medieval England]...[relied] on lay judges, broader legal principles, and oral arguments” (Glaeser and Shleifer 1193). It is in the application of the broader legal principles provided by common law and then interpreted by human judgment of the “lay judges,” in addition to the need for human judgment in interpreting oral arguments and human imposition of punishment that created a conflict between Jesus’s teachings on human judgment and punishment and the secular medieval English courts. This is the clearest departure from Jesus’s teachings, which paved the way for a more secularized system. Furthermore, the secular courts’ prohibition of circumstantial evidence contradicted the use of circumstantial evidence in the ecclesiastical courts “as an essential tool” in criminal proceedings (McAuley 509); thus, as the medieval period proceeded, the separation between the ecclesiastical and secular legal systems grew, which ultimately culminated in the development of two distinct legal systems: civil law and common law.

The Common Law Tradition: Common Law versus Civil Law

The medieval English legal system became the basis for a tradition of law known as common law, from which the laws of many countries were formed, including the United States. Until the twelfth and thirteenth centuries, the legal systems of France and England were fairly

similar and “governed primarily by religious and customary law” (Glaeser and Shleifer 1197). However, the division of the ecclesiastical and secular courts in England during this period led to the development of another system of law as well, known as civil law. Civil law was based in Roman Law, but “was lost during [the] Dark Ages...[and] rediscovered by the Catholic Church in the eleventh century,” thus closely tying it to ecclesiastical or canon law (Glaeser and Shleifer 1193). Eventually, civil law was adopted by “several continental states, including France [and Spain]”, and it was “transplanted through conquest and colonization to Latin America and parts of Africa and Asia” (Glaeser and Shleifer 1193), while common law was spread throughout the English colonies, including Australia, Canada, and, most significantly, the United States.

The main differences between civil and common law are structural: “civil law relies on professional judges, legal codes, and written records, while common law [relies] on lay judges, broader legal principles, and oral arguments” (Glaeser and Shleifer 1193). These systems developed this difference due to the “different levels of control that the sovereign exercised over judges” (Glaeser and Shleifer 1194) during the medieval period, as the French monarchy had more trouble gaining power over feudal lords, and thus needed stronger control over their legal systems. They appointed professional judges that were bound by specific legal codes, so that feudal lords could not bully or coerce judges into serving their interests. The codification of “bright line” rules, or laws that make it simple to determine whether they have been broken, was characteristic of civil law systems. However, in England, the king had much more power over the nobles and feudal lords, and he therefore did not to exert his influence as strongly over the local judges. Common law systems used oral arguments and separate prosecutors and judges to determine their cases, and placed a heavier importance on precedent. Thus, common law was created to allow the judges and eventually

juries more power and independence from the monarchy in determining the outcome of a case (Glaeser and Shleifer 1194-1196).

Over time, “common law judges insisted that the principal source of English law was historical precedent rather than the will of the sovereign,” and by the end of the seventeenth century, royal control was entirely removed from the English legal system (Glaeser and Shleifer 1200). The French monarchy, in contrast, “move[d] toward a judge-inquisitor model governed by Romano-Canon law” (Glaeser and Shleifer 1200) in the mid-thirteenth century, thus putting civil law more under the control of the Church. However, despite this difference, both systems used human judgment, which Jesus expressly forbids in the Gospel of Matthew.

The importance of the tradition of common law, and its reliance on precedent cannot be overlooked. Because the English legal system relied so heavily on precedent cases and because the system began as an ecclesiastically entangled system, common law brought religious precedents. As common law spread through English colonization, it embedded Christian morality in other legal systems through its use of religious precedents. Of course, one of these colonies was the United States of America, and while there has been a claim of a separation of church and state in the United States, its reliance on English common law suggests that there are elements of Christianity entangled within its legal system. In fact, even the United States Supreme Court “noted the close relation of church and state when it recognized that ‘the Christian religion is part of the common law...’” in 1844 (Garry 491).

Examining the Modern American Legal System through the Lens of the Gospel of Matthew

Introduction

In this final section, I will examine how elements of Jesus's teachings in the Gospel of Matthew on violence and non-retaliation – as well as on judgment and punishment – have persisted throughout history and survived into the modern American legal system. Because the tradition of common law was transplanted through English colonization of what is now the United States, many of the religious precedents in that tradition were transplanted in the colonies as well, and they eventually made their way into the American legal system. Despite the alleged separation of church and state, Christianity has had an influence on the American legal system's treatment of these issues, and therefore, it is appropriate to examine this system through the lens of the Gospel of Matthew and to examine how this system's laws fit into the mold created by Jesus's teachings. The United States' legal history, much like Medieval England's legal history, reflects the struggle of how to deal with the issues of violent crime, judgment, and punishment while also dealing within the context of the moral code presented in Jesus's teachings in Matthew.

The Separation of Church and State

Though the United States Constitution includes in its first amendment what has come to be known as “the Establishment Clause,” this clause has been transformed into its modern context, and through this transformation, it has ignored the original intention of the Framers of the Constitution. In fact, the strict separation now commonly cited in Establishment Clause jurisprudence is not mentioned or even implied in the Establishment Clause or anywhere else in the Constitution: the “wall of separation” was merely “a figure of speech lifted from a letter Thomas Jefferson wrote years after the First Amendment was ratified” (Garry 497). When the Constitution was written in

the late eighteenth century, “religion was as publicly practiced as politics, with civil laws often reflecting religious values” (Garry 475). While many of the colonies were founded in America with religious freedom as their main goal, this certainly did not imply that these new colonies would be governed without religion. In fact, “the new Americans...were simply attempting to make the New World into a better image of God’s Kingdom. To them, the lesson of religious intolerance in Europe was not that church and state should be strictly separated, but that a corrupt government had in turn corrupted a state religion” (Garry 476). In fact, the colonists chose to break off from English control not because they wanted to build a “wall of separation” between religion and government, but because they felt that the English establishment of the Anglican Church encroached on a fundamental right to freedom of religion. This implies that the colonies, and subsequently the United States, were founded on the principles of religion, and thus, these principles could not truly be separated from their government. The colonists sought to create a system that would not persecute anyone based on their religious choice and that would not show preference to one religion over another. In creating this system, the Framers, whether intentionally or not, followed Jesus’s teachings in Matthew – they accepted all religious beliefs, and created a system that would not allow violence toward others based on those beliefs.

The Framers’ decision to allow religious influence in their new government without showing preference to any one religion has had a significant impact on developments within the United States government and legal systems. For example, one can observe this through many practices in modern America:

Witnesses in courts swear on the Bible and take an oath that concludes “So help me God.”

Presidential proclamations invoke God. The Supreme Court opens its sessions with the

invocation “God save the United States and this honorable Court,” and above the seat of the

Chief Justice hangs the Ten Commandments. In the House and Senate chambers appear the words “In God We Trust.” The Great Seal of the United States proclaims “Annuit Coeptis,” which means “He [God] has smiled on our undertaking,” and under the seal is inscribed the phrase from Lincoln’s Gettysburg Address, “This nation under God.” Engraved on the metal cap of the Washington Monument are the words “Praise be to God.” Both houses of Congress, as well as many state legislatures, precede their daily work with a prayer given by a public-funded legislative chaplain. The national currency carries the motto “In God We Trust,” and schoolchildren pledge allegiance to “one nation under God.” (Garry 493)

The copious examples provided in this analysis prove that the Church and state are truly not separate in the United States, despite the suggestion of modern Establishment Clause jurisprudence. The influence of religious doctrine, of course, impacts how the American legal system treats the issues of violence, retaliation, judgment, and punishment.

The Use of Violence in Self-Defense Under Modern American Law

Within the United States, there are hundreds of laws governing violence and violent crimes, as well as how citizens respond to violence and how offenders are tried and punished for violent crimes. Each of these laws is either codified or dealt with through legal precedents, and for the purposes of this argument, I will focus specifically on Federal and New York State laws on self-defense, such as modern Castle Doctrine – a surviving doctrine from English common law – and so-called “Stand Your Ground” laws, which are a modern adaptation and expansion of Castle Doctrine. It is through this examination that one can see the struggle of modern jurists to create a system which both follows Jesus’s moral instruction in Matthew and practically and justly deals with violent crime.

The United States has attempted to deal with the issue of violence in cases of self-defense by allowing a defendant accused of violent crime to claim self-defense, in both state and federal courts. However, the legal system has significantly limited what it considers to be justified violence under self-defense law. This demonstrates modern jurists' (perhaps unconscious) desire to cling to foundational principles Jesus's teachings that prohibit human judgment and the implementation of violent punishment.

According to FindLaw.com, "Self-defense is defined as the right to prevent suffering force or violence through the use of a sufficient level of counteracting force or violence" ("Self-Defense Law: Overview"). This definition leaves room for interpretation and significant questions, however, such as how much force is considered sufficient and how can one determine that the victim's actions were truly intended to prevent the suffering of personal violence. To deal with these questions and limit the violence that is legally permissible, a self-defense claim must be validated by meeting specific conditions. First, the self-defense act must be in response to an "imminent threat" – this threat can be physical or verbal, as long as the verbal threat "puts the intended victim in an immediate fear of physical harm" ("Self-Defense Law: Overview"). In addition, within this requirement, the justification for self-defense disappears when the threat ends. For example, if someone punches someone else in the face, but promptly walks away, the threat has ended and any attempts by the initial victim to strike back would be considered retaliatory and would not be covered by self-defense laws. This requirement prevents the type of retaliatory justice that Jesus is so firmly against in his teachings, but it also allows a modern sense of protection against violence under the law that Jesus's teachings do not make room for.

Furthermore, a self-defense claim requires that the victim uses the appropriate amount of force in response to an attack – "in other words, a person can only employ as much force as

required to remove the threat” (“Self-Defense Law: Overview”). This requirement sets up a proportionality principle in self-defense law, which prevents someone from responding to an attack with even more violence. For example, as in the previous example, if the attacker punched the victim, the victim cannot then kill the attacker, even if in immediate response to the threat. Finally, the original self-defense laws required victims to attempt to retreat and avoid the attack before responding violently. Proponents of this requirement “argue that it is the supreme value of life that demands flight of those who are unlawfully attacked” (Carpenter 656).

Castle Doctrine

Castle Doctrine, which is derived from the medieval feudal system and its use of violence and castles as defense, is a modern legal doctrine that serves in the federal and state courts as an exception to the “duty to retreat” rule. Modern Castle Doctrine suggests, “Generally...those who are unlawfully attacked in their homes have no duty to retreat, because their homes offer them the safety and security that retreat is intended to provide” (Carpenter 656-657). Therefore, within one’s home, he is legally permitted to use lethal force, if necessary, in self-defense. This, like other self-defense laws, poses significant legal and moral dilemmas, as it both protects the sanctity of life by allowing a victim to defend himself, but also forces the attacker to forfeit his own right to life. In addition, this has challenging consequences when self-defense is used within one’s home to defend against an attacker who also lives in that home, such as in domestic violence cases. In that case, both the attacker and the victim have the right to life and the right to safety and security in their home, making such cases legally complex. Castle Doctrine is a surviving vestige of the medieval feudal system and, though it represents an attempt to limit violence in that it only allows deadly violence in defense of self in one’s own home, it does not follow the morality expressed by Jesus’s teachings or historical jurisprudence on self-defense, both of which seek to protect life. Therefore, a

true follower of Jesus would not be able to defend himself, even in his home, as Castle Doctrine would suggest; instead, he would have to fall victim to martyrdom, which is one of the expectations outlined by Jesus in the Gospel of Matthew.

Recently, twenty-five states have expanded Castle Doctrine and passed so-called “Stand Your Ground Laws,” which do not require a “duty to retreat” in many, if not all, circumstances. These states include Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia (“Self Defense and ‘Stand Your Ground’”). Florida was the first to pass such a law in 2005 (Cheng and Hoekstra 821). However, New York State does not have any such law. Each of the states that allow a victim to “stand his ground” clearly violates Jesus’s teachings on how to respond to violence, thus suggesting a recent transition even further away from Jesus’s moral code in an attempt to justify self-defense and protect victims of violence.

A study on whether expansions to Castle Doctrine deter crime or simply escalate violence suggests, “[T]he prospect of facing additional self-defense does not deter crime...[and there is] in contrast...significant evidence that the laws lead to more homicide. Estimates indicate that the laws increase homicides by a statistically significant 8 percent” (Cheng and Hoekstra 823). Cheng and Hoekstra also establish that the misreporting of these justified self-defense killings are not likely to make up the entirety of the increase of 600 homicides per year in these states (Cheng and Hoekstra 824), as “there would have to be at least some cases of multiple killed assailants by a would-be-killed victim” (Cheng and Hoekstra 844). Furthermore, according to their statistical analysis, they found “that 90 percent of the time [there would be] deterrence effects of less than...0.5 percent for...aggravated assault” (Cheng and Hoekstra 832). While it would seem that a rational criminal

would be less likely to attack a victim in a state where the victim would then have the right to use lethal force against him, this study found that there was little deterrent effect. In addition, the lack of deterrent effect created by these laws, combined with the potential explanation that “a rational criminal may respond to a real or a perceived increase in the likelihood of encountering a victim willing to use lethal force by using a deadly weapon himself” could potentially explain the increase in homicides, but “while [the study finds] suggestive evidence of escalation by criminals, it is not conclusive” (Cheng and Hoekstra 845). The evidence brought forth by this study suggests that perhaps the United States’ recent legal expansions to Castle Doctrine should be reevaluated in order to meet the developing expressions in the legal field that condemn the use of retaliatory violence, even in self-defense. In fact, this study suggests that Jesus’s teachings on violence may even be a moral goal for the U.S. legal system, as the separation from his teachings has led to more violent homicides, and the net loss of life, while legally permissible, may not be morally permissible in modern public and legal opinion.

On the “Right to Self-Defense”

In fact, there is some debate over whether there is a “right to self-defense” at all. Whitley Kaufman argues, “...it is not obvious from either the moral or legal standpoint why we should want to allow individuals to be making judgments about who they may kill on their own initiative” (Kaufman 20). Of course, Jesus’s teachings expressly forbid this type of individual judgment and retaliatory violence. Jesus’s full prohibition of this type of self-defense makes the issue much simpler than the modern legal system, which tangles the right to life of the victim and the attacker, as given in the United States Constitution’s Fifth Amendment. If all people have the right to life and due process, this complicates the right to self-defense, especially in lethal incidents. For example, if an attacker attempts to kill a victim, and the victim in response uses his “right to self-defense” to

kill the attacker, while this is typically legally permissible under self-defense law, the victim's use of lethal force "does not provide due process of law" and requires the forfeiture of the attacker's right to life (Kaufman 23).

However, this poses an additional problem; there is a "common belief that basic human rights are *inalienable*," and therefore, they cannot be forfeited, no matter if the person is an enemy or an attacker. In fact, Kaufman argues that the use of lethal force in self-defense is not only a violation of the right to life, but also "a radical divergence from the common law tradition of self-defense [and] morally intolerable" (Kaufman 27). This expression seems to be prevalent in modern society, with many supporters, such as Robert Schopp, a law professor, who argues in his 1994 article that "allowing 'severe violence' to prevent 'relatively minor transgressions' is not only 'intuitively questionable,' but also 'conflicts with predominant law'" (Kaufman 28). Similarly, Stuart Green, another law professor, states in his 1999 article, "Human life is simply too precious a good [not] to be valued over even valuable and irreplaceable property, such as one's house...[and it] is simply implausible that an intruder forfeits his right to life by invading another's privacy" (Kaufman 27). Both the medieval regulation of violence and the common law tradition of a duty to retreat seek to protect innocent human life and prevent further violence, while a right to self-defense, especially under the new "Stand Your Ground Laws," seems to do the opposite. Jesus's teachings also seem to support this idea that all people should be treated with kindness, and that no attack should be met with further violence, even if in self-defense. Therefore, the recent rejection of the duty to retreat is a departure from both Jesus's teachings and historical jurisprudence.

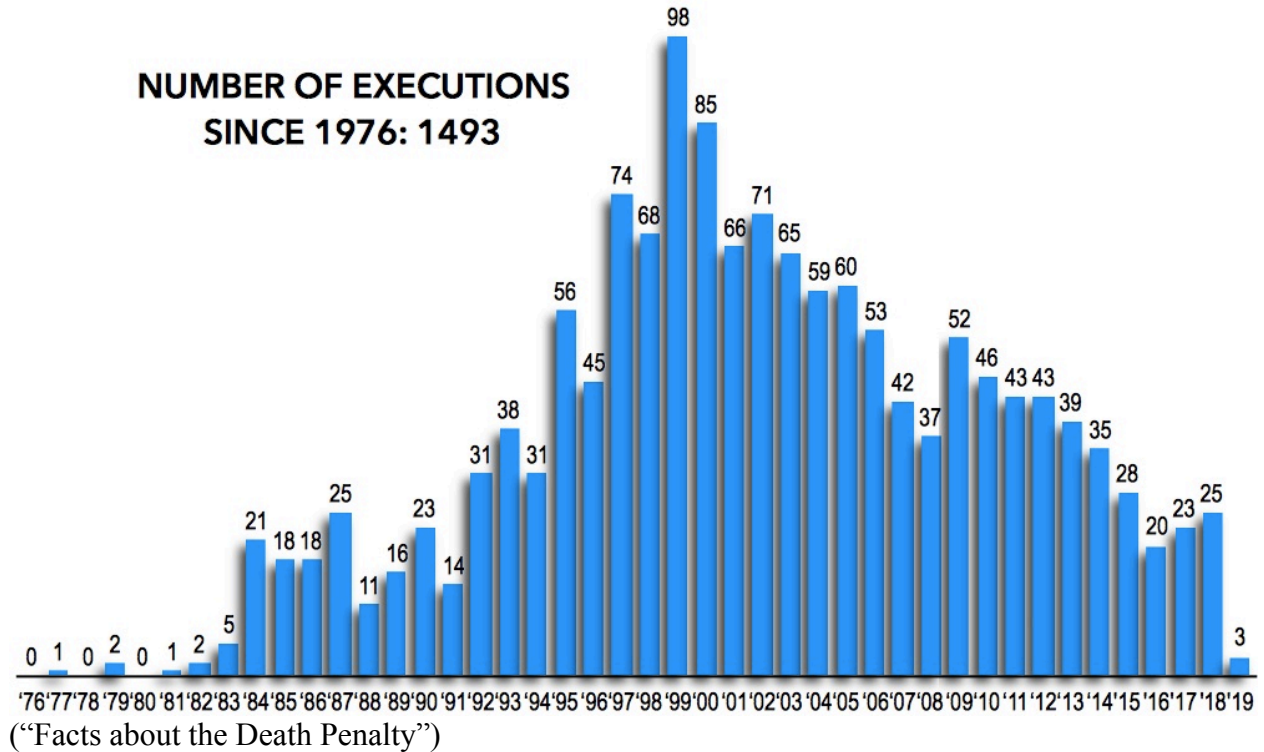
Judgment and Punishment in the Modern U.S. Legal System

Similarly to the late Medieval English legal system, the United States legal system uses judges and juries to determine an accused defendant's guilt or innocence. This again is dependent

on human judgment. However, as mentioned previously, there is also a significant dependence on the facts presented in a case, instead of purely on human judgment. In this way, the United States legal system has somewhat skirted Jesus's prohibitions of the use of human judgment, though it is still clear that judges are given some leeway in interpreting the laws, as other judges can have the same case presented to them and make a different judgment decision. Because of this, judges – and, in many cases, juries – parallel the eschatological God, who comes to determine the wickedness of humans and punish the evildoers.

Punishment in the modern legal system is also similar to that of the medieval legal system; however, it still relies on human judgment in many cases to determine the severity of the punishment. Jesus does not condone humans violently punishing other humans in Matthew, but the use of violent punishment by the modern American legal system emphasizes the struggle of the Founding Fathers and of modern legal scholars and legislators to practically apply Jesus's teachings. There is a clear belief that crime, especially violent crime, cannot go unpunished on Earth, despite whatever consequences may be waiting for evildoers in the eschatological period, as this would lead to a kind of anarchy.

Punishment in the United States generally serves retributive or deterrent purposes and has a wide range of severity, reaching up to the death penalty, which is allowed by 30 states, or the majority of the nation ("Facts about the Death Penalty"). However, there is evidence that the use of the death penalty is decreasing. The chart below depicts this decrease:



Clearly, since its peak in 1999, the use of the death penalty as punishment has significantly decreased to just over a quarter of the number of executions as there were only twenty years ago. Additionally, the number of death penalty sentences per year across the country has dramatically decreased from 295 in 1998 to only 42 in 2018 (“Facts about the Death Penalty”). In this regard, the United States legal system has shifted away from humans punishing other humans with violence and toward the ideals of Jesus’s expectations. It is clear that the United States courts have also shifted further away from using human judgment as the basis for determining guilt or innocence and instead rely more heavily on science and facts, such as DNA evidence. In fact, since 1973, there have been more than 160 exonerations of people sentenced to the death penalty. According to the Death Penalty Information Center, “[f]rom 1973-1999, there was an average of [three] exonerations per year [and from] 2000-2011, there was an average of [five] exonerations per year” (“Facts about the Death Penalty”). Technological advances in the past two decades, especially in the use of DNA evidence, have led to the exonerations of many defendants who are sentenced to death.

Perhaps another reason that fewer convicted criminals are being sentenced to death is that there is evidence that suggests that the death penalty does not truly serve its purpose as a crime deterrent, as the South has the highest murder rate of any region in the U.S., but it also has the highest execution rate of 80%, compared to the Northeast with only 1% of all executions and the lowest murder rate in the U.S. (“Facts about the Death Penalty”). Therefore, it is logical that the United States is moving away from the use of the death penalty as a punishment for violent crime because it does not serve the true purpose of punishment. Even further, public opinion seems to be turning against the death penalty as a sentence for violent crime. In a 2010 poll conducted by Lake Research Partners, 61% of voters said that they would choose a punishment – each of which were nonviolent and noncapital punishments – other than the death penalty for murder, while another “2009 poll commissioned by DPIC found that police chiefs ranked the death penalty last among ways to reduce violent crime” (“Facts about the Death Penalty”). It is clear that the beliefs of a majority of the population are in conflict with the continued use of the death penalty, much as Jesus’s teachings are against the use of the death penalty or any violent punishment by humans.

Even the Supreme Court has cited the “evolving standards of decency that mark the progress of a maturing society” (*Trop v. Dulles*) in several cases that suggests, at least in some circumstances, that capital punishment is not appropriate or in keeping with the current standard of decency. Some of these cases include *Thompson v. Oklahoma* (1988), which prohibited the execution of defendants under sixteen years old at the time of their crime (*Thompson v. Oklahoma*); *Stanford v. Kentucky* (1989), which prohibited the execution of those over 15 but under 18 at the time of their crime, thus expanding on the *Thompson* decision (*Stanford v. Kentucky*); *Atkins v. Virginia* (2002), which prohibited the execution of mentally retarded defendants (*Atkins v. Virginia*); and *Eddings v. Oklahoma* (1982), which not only prohibited the execution of a minor

without examining his mitigating circumstances, but also, in his concurring opinion, Justice Brennan states that the death penalty constitutes cruel and unusual punishment in all instances, thus furthering the evolution of the standard of decency to include all death sentences (*Eddings v. Oklahoma*). This shows that modern jurisprudence has moved away from the use of the death penalty.

In fact, in reference to the ineffectiveness of deterrence and the debate on the severity of punishments, over the last one hundred and fifty years “punishment has grown milder and milder” (Bittner and Platt 93), thus suggesting a movement away from the violent extremes of the death penalty and capital punishment toward the more Christian moral ideals of rehabilitation and the protection of human life. According to Bittner and Platt:

[Penal reform] set out by abolishing the stock, the branding iron, and the gallows, instituted incarceration as the virtually universal form of sanctioning criminal offences, and proceeded slowly to improve the conditions of life in prisons...one [reform] after another, the pain in punishment withered away. (Bittner and Platt 95)

This shows that over time, especially during the last two centuries, punishment has evolved to be a more decent and less violent expression of human judgment in the United States. Clearly, this has moved society closer to the expectations of Jesus, though the practicality of these expectations still places them out of reach in the United States legal system. Bittner and Platt also state:

Of course, [the United States] continue[s] to punish offenders...with the solemnity that ordinarily attaches to traditions. There is, however, hardly any doubt that this is done, by and large, with misgivings and the punitive approach is abandoned readily at the slightest hint of an alternative, while at the same time the suggestion that [the nation] punish harshly, say by

mutilation, would certainly be repudiated even against perfect evidence of its deterrent effect. (Bittner and Platt 96)

This analysis further suggests that the United States legal system has developed a reluctance to use violent punishment when there are alternative options available, like incarceration or rehabilitation, both of which more closely align with Jesus's teachings in Matthew while remaining practical for modern, real-world applications. The struggle between the morality expressed by Jesus's teachings in Matthew and the practicality of the applications of those teachings serves to exemplify the challenge facing the legal system and its leaders, as well as to potentially explain the shift in penological practices over the last one hundred and fifty years, which has "resulted in an internal pacification of the modern world on a scale unknown in human history" (Bittner and Platt 98), much like the peacemaking Jesus expects from his followers would have resulted in.

Conclusion

In the most recent penological debates, there is "a schism between some who take the psychologically oriented 'treatment' approach and others, who advocate an 'old fashioned' punitive approach" (Bittner and Platt 98). However, it is clear that a significant portion of the United States populace and legal field believe that there is a societal "evolving standard of decency," as society pushes back against capital punishment and the death sentence. While there are some exceptions to society's rejection of violence, such as the recent expansions to Castle Doctrine across half of the country, the United States legal system has seemed to develop a more pacifistic approach in dealing with violent crimes than has ever been used throughout all of history. This "evolving standard of decency" seems to be edging the United States ever closer to the ideals and expectations expressed by Jesus's teachings on violence and self-defense in the Gospel of Matthew. If this is truly the type of legal system that modern jurisprudence seeks to establish, Jesus's moral expectations, while

certainly challenging to meet, may not prove to be entirely impractical in terms of how the system prevents violent crime and deals with those who do commit such acts. In fact, if the justice system were to shift even further toward a rehabilitative approach, the United States legal system would certainly be meeting Jesus's expectations of loving one's enemies, and perhaps in turn would help form a more peaceful and kind society – one that Jesus would be proud to call “perfect, as [our] heavenly Father is perfect” (Matthew 5:48).

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